

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NARCISSUS SWANIGAN,

Petitioner,

v.

JEF UTHECHT,

Defendant.

Case No. C06-5120 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATIONS
DISMISSING PETITION FOR
HABEAS CORPUS WITH
PREJUDICE

The Magistrate Judge recommends that this petition for habeas corpus relief be dismissed with prejudice as time barred by the one-year statute of limitations, 28 U.S.C. 2244(d). As detailed by the Magistrate Judge, a challenge to Petitioner's 1995 conviction is several years time barred as the last day of the one year time frame expired on June 21, 1999. Petitioner does not dispute the running of the statute of limitations, but asserts the statute is inapplicable because his sentence is invalid on its face. The Court is unpersuaded by Petitioner's argument. Petitioner's claim that he is currently challenging a sentencing discrepancy and not his conviction is still a challenge to his underlying conviction and sentence subject to 28 U.S.C. § 2244(d).

The Court, having reviewed the petition for habeas corpus, the Report and Recommendation


1 of Judge J. Kelly Arnold, United States Magistrate Judge, Objections thereto, and the remaining
2 record, does hereby find and Order:

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- 4 (1) The Court adopts the Report and Recommendation;
- 5 (2) Petitioner's federal habeas petition is **DISMISSED WITH PREJUDICE**; and
- 6 (3) The Clerk is directed to send copies of this Order to petitioner and to Magistrate
7 Judge J. Kelly Arnold.

8 DATED this 22nd day of September, 2006.

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FRANKLIN D. BURGESS
12 UNITED STATES DISTRICT JUDGE

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